

§ 10.27

to the regulations of this part (published at 37 FR 11676): *Provided*, That the burden of showing that representation commenced before publication is with the former Government employees, their partners and associates.

[42 FR 38352, July 28, 1977, as amended at 57 FR 41095, Sept. 9, 1992; 59 FR 31527, June 20, 1994]

§ 10.27 Notaries.

No attorney, certified public accountant, enrolled agent, or enrolled actuary as notary public shall with respect to any matter administered by the Internal Revenue Service take acknowledgments, administer oaths, certify papers, or perform any official act in connection with matters in which he is employed as counsel, attorney, or agent, or in which he may be in any way interested before the Internal Revenue Service (26 Op. Atty. Gen. 236).

[31 FR 10773, Aug. 13, 1966, as amended at 57 FR 41095, Sept. 9, 1992]

§ 10.28 Fees.

(a) *Generally*. A practitioner may not charge an unconscionable fee for representing a client in a matter before the Internal Revenue Service.

(b) *Contingent fees for return preparation*. A practitioner may not charge a contingent fee for preparing an original return. A practitioner may charge a contingent fee for preparing an amended return or a claim for refund (other than a claim for refund made on an original return) if the practitioner reasonably anticipates at the time the fee arrangement is entered into that the amended return or claim will receive substantive review by the Service. A contingent fee includes a fee that is based on a percentage of the refund shown on a return or a percentage of the taxes saved, or that otherwise depends on the specific result attained.

[59 FR 31527, June 20, 1994]

§ 10.29 Conflicting interests.

No attorney, certified public accountant, enrolled agent, or enrolled actuary shall represent conflicting interests in his practice before the Internal Revenue Service, except by express consent of all directly interested par-

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ties after full disclosure has been made.

[31 FR 10773, Aug. 13, 1966, as amended at 57 FR 41095, Sept. 9, 1992]

§ 10.30 Solicitation.

(a) *Advertising and solicitation restrictions*. (1) No attorney, certified public accountant, enrolled agent, enrolled actuary, or other individual eligible to practice before the Internal Revenue Service shall, with respect to any Internal Revenue Service matter, in any way use or participate in the use of any form of public communication containing (i) A false, fraudulent, unduly influencing, coercive, or unfair statement or claim; or (ii) a misleading or deceptive statement or claim. Enrolled agents, in describing their professional designation, may not utilize the term of art “certified” or indicate an employer/employee relationship with the Internal Revenue Service. Examples of acceptable descriptions are “enrolled to represent taxpayers before the Internal Revenue Service,” “enrolled to practice before the Internal Revenue Service,” and “admitted to practice before the Internal Revenue Service.” Enrolled agents and enrolled actuaries may abbreviate such designation to either EA or E.A.

(2) No attorney, certified public accountant, enrolled agent, enrolled actuary, or other individual eligible to practice before the Internal Revenue Service shall make, directly or indirectly, an uninvited solicitation of employment in matters related to the Internal Revenue Service. Solicitation includes, but is not limited to, in-person contacts and telephone communications. This restriction does not apply to (i) Seeking new business from an existing or former client in a related matter; (ii) communications with family members; (iii) making the availability of professional services known to other practitioners, so long as the person or firm contacted is not a potential client; (iv) solicitation by mailings; or (v) non-coercive in-person solicitation by those eligible to practice before the Internal Revenue Service while acting as an employee, member, or officer of an exempt organization listed in sections 501(c)(3) or (4) of the

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Internal Revenue Code of 1954 (26 U.S.C.).

Any targeted direct mail solicitation, i.e. a mailing to those whose unique circumstances are the basis for the solicitation, distributed by or on behalf of an attorney, certified public accountant, enrolled agent, enrolled actuary, or other individual eligible to practice before the Internal Revenue Service shall be clearly marked as such in capital letters on the envelope and at the top of the first page of such mailing. In addition, all such solicitations must clearly identify the source of the information used in choosing the recipient.

(b) *Fee information.* (1) Attorney, certified public accountant, enrolled agent, or enrolled actuary and other individuals eligible to practice before the Internal Revenue Service may disseminate the following fee information:

(i) Fixed fees for specific routine services.

(ii) Hourly rates.

(iii) Range of fees for particular services.

(iv) Fee charged for an initial consultation.

Any statement of fee information concerning matters in which costs may be incurred shall include a statement disclosing whether clients will be responsible for such costs.

(2) Attorney, certified public accountant, enrolled agent, or enrolled actuary and other individuals eligible to practice before the Internal Revenue Service may also publish the availability of a written schedule of fees.

(3) Attorney, certified public accountant, enrolled agent, or enrolled actuary and other individuals eligible to practice before the Internal Revenue Service shall be bound to charge the hourly rate, the fixed fee for specific routine services, the range of fees for particular services, or the fee for an initial consultation published for a reasonable period of time, but no less than thirty days from the last publication of such hourly rate or fees.

(c) *Communications.* Communication, including fee information, may include professional lists, telephone directories, print media, mailings, radio and

television, and any other method: *Provided*, that the method chosen does not cause the communication to become untruthful, deceptive, unduly influencing or otherwise in violation of these regulations. It shall be construed as a violation of these regulations for a practitioner to persist in attempting to contact a prospective client, if such client has made known to the practitioner a desire not to be solicited. In the case of radio and television broadcasting, the broadcast shall be pre-recorded and the practitioner shall retain a recording of the actual audio transmission. In the case of direct mail communications, the practitioner shall retain a copy of the actual mailing, along with a list or other description of persons to whom the communication was mailed or otherwise distributed. Such copy shall be retained by the practitioner for a period of at least 36 months from the date of the last transmission or use.

(d) *Improper associations.* An attorney, certified public accountant, enrolled agent, or enrolled actuary may in matters related to the Internal Revenue Service, employ or accept employment or assistance as an associate, correspondent, or subagent from, or share fees with, any person or entity who, to the knowledge of the practitioner, obtains clients or otherwise practices in a manner forbidden under this section: *Provided*, That a practitioner does not, directly or indirectly, act or hold himself out as an Internal Revenue Service practitioner in connection with that relationship. Nothing herein shall prohibit an attorney, certified public accountant, or enrolled agent from practice before the Internal Revenue Service in a capacity other than that described above.

[44 FR 4943, Jan. 24, 1979, as amended at 57 FR 41095, Sept. 9, 1992]

§ 10.31 Negotiation of taxpayer refund checks.

No attorney, certified public accountant, enrolled agent, or enrolled actuary who is an income tax return preparer shall endorse or otherwise negotiate any check made in respect of